

APPEAL NO. 020338
FILED APRIL 3, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 10, 2002. The hearing officer resolved the disputed issues by concluding that the compensable injury does extend to and include an injury to the L4-5 and L5-S1 levels of the respondent's (claimant) lumbar spine and that the claimant had disability from _____, continuing through the date of the CCH. The appellant (carrier) appealed, arguing that the determinations of the hearing officer were not sufficiently supported by the evidence. There is no response from the claimant to the carrier's request for review in the appeal file.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The claimant worked as a welder for the employer. It was undisputed that on _____, the claimant sustained a compensable injury. The claimant testified that he was injured when, as he was doing repair work on a rock crusher, he was hit in the head and shoulder by falling rocks. The claimant was immediately taken to a doctor, who diagnosed the claimant with a laceration of the head as well as cervical and lumbar strain. When the claimant continued to have low back pain, an MRI was ordered which showed a herniated disc at L5-S1 and disc bulge at L4-5. The claimant testified that his injury includes an injury to his lower back and that as a result of his injury he had disability from _____, continuing through the date of the CCH.

The carrier contends that the claimant's injury is limited to a head laceration and cervical strain. The carrier further argues that the claimant's lumbar problems are the result of a motor vehicle accident a few days before the compensable injury. The claimant denies this. The carrier also argues that the hearing officer's finding of disability is not sufficiently supported by the evidence.

Conflicting evidence was presented at the hearing regarding the extent of the compensable injury. Extent of injury is a question of fact. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. The hearing officer is the sole judge of the weight and credibility of the evidence including the medical evidence. Section 410.165(a); *and see Texas Employers Insurance Association v. Campos*, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. *Garza v. Commercial Insurance Company of Newark, New Jersey*, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). When reviewing a hearing officer's decision for factual sufficiency of the evidence, the Appeals Panel should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Cain v. Bain*, 709

S.W.2d 175, 176 (Tex. 1986). There is sufficient evidence to support the hearing officer's decision.

The claimant also had the burden to prove that he had disability. The hearing officer decided that the claimant had disability from _____, continuing through the date of the CCH. The carrier contends that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be manifestly unjust. In workers' compensation cases, the issues of injury and disability may generally be established by the claimant's testimony alone. Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.). The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not against the great weight and preponderance of the evidence.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **HARTFORD UNDERWRITERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**C T CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge